

TEXAS COMPTROLLER *of* PUBLIC ACCOUNTS

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Date: March 26, 2002

AP 70

To: All Division Personnel

From: Otis Fields, Manager, Audit Division
Tony Luna, Assistant Manager, Audit Division

Subject: Issuing a Subpoena to Obtain Records

During the last few years, we have seen a large increase in estimated audits and feel that the number of estimates may have been reduced if a subpoena for records had been issued. The more common reasons for completing estimates are refusal to provide records and continual cancellation or postponement of the audit fieldwork. When these situations occur it may be more effective to issue subpoenas.

Before a subpoena can be issued, the following steps are required:

1. **Documentation:** All contact with the taxpayer should be documented in the audit plan if there are indications of problems with obtaining the records. This includes phone calls, letters or any other types of correspondence, issuance of statute waivers, rescheduling of appointments. It is also important to discuss these problems with management during workload reviews.

2. **Letters:** The auditor will issue a letter requesting records, including that a lack of response from the taxpayer could result in an estimate or a subpoena for their records. Allow the taxpayer 30 days to respond. This letter will be sent certified mail, return receipt requested ([See Attachment: Letter 1-First Request for Records](#)).

If the taxpayer does not respond to the first letter, a second letter will be sent by the Supervisor/Manager requesting the records. It will include that a subpoena will be issued if there is no response within 14 days. It should also be sent certified mail, return receipt requested. ([See Letter 2: - Second Request for Records](#)).

3. **Subpoena:** If the taxpayer does not respond to the second request, then the auditor should complete the [Request For Subpoena of Records form \(example attached\)](#) with the following information:

1. Type of Subpoena: First party or Third party

2. Name and address of the person or entity to whom subpoena will be served
3. Name and address of person or entity for whose records subpoena will be served
4. Detailed description of records for which subpoena will be served
5. Time period of records
6. Name of person who will serve the subpoena
7. Title of person and the comptroller field office

Once the auditor has completed the Request for Subpoena of Records form, it must be emailed to the Supervisor or Manager who will then email it to Agency Affairs section of the General Counsel Division. The Director of Audit Division should also be cc'd on the email. General Counsel will issue the subpoena and forward it back to the auditor. The auditor can serve the subpoena or request assistance from the CID Investigators.

If you have any questions on this issue, please discuss with your office supervisor/manager.

Letter 1: First Request for Records

December 27, 2002

Tom Jones, President
124 State Street
Austin, TX 78711

Re: ABC Corporation – TP#: 12345678901
State and Local Sales and Use Tax

Dear Tom Jones:

We have received no response to our previous request for information and access to your records regarding an audit of your State and Local Sales and Use Tax account for the period of February 1, 1998 through December 31, 2001.

Below please find a general list of records that will be required to conduct the audit. This list is not meant to be all-inclusive and the actual records required may be extended based upon the nature and complexity of your business as well as any other pertinent factors.

Sales summaries and invoices	Computerized accounting records
Contracts with customers	Asset and expense purchase invoices
Materials purchase invoices	Depreciation schedules (assets)
Federal Income Tax Returns and work papers	Charts of accounts
General and subsidiary journals and ledgers	Customer lists
Financial Statements	Bank Statements
Current files of resale/exemption certificates	

Under Sections 111.004 and 151.023 Texas Tax Code, the Comptroller's Office has the legal authority to examine all taxpayer records regardless of how they are stored or maintained. The records to be examined are determined solely by the Comptroller's discretion and judgment.

If records are not provided by January 27, 2003, the audit will be estimated or an administrative subpoena issued. If you have any questions concerning this matter, please contact me at.

Sincerely,

Sue Craig
Auditor

Letter 2: Second Request for Records

January 27, 2003

Tom Jones, President
124 State Street
Austin, TX 78711

Re: ABC Corporation – TP#: 12345678901
State and Local Sales and Use Tax

Dear Tom Jones:

On December 27, 2002, a records request letter was sent to you with a response deadline of January 27, 2003. This deadline has not been met and we are therefore again requesting the below records for the audit period of February 1, 1998 through December 31, 2001. This is a general list of records that will be required to conduct the audit. This list is not meant to be all-inclusive and the actual records required may be extended based upon the nature and complexity of your business as well as any other pertinent factors.

Sales summaries and invoices	Computerized accounting records
Contracts with customers	Asset and expense purchase invoices
Materials purchase invoices	Depreciation schedules (assets)
Federal Income Tax Returns and work papers	Charts of accounts
General and subsidiary journals and ledgers	Customer lists
Financial Statements	Bank Statements
Current files of resale/exemption certificates	

The Comptroller is authorized to issue administrative subpoenas requiring the production of all records and documents that relate to the taxpayer's business for purposes of inspection and audit. If such records and documents are not produced under a subpoena, the Comptroller will take legal action in State District Court to compel their production. Furthermore, a corporate taxpayer's failure to comply with a Comptroller's subpoena to produce records may also result in the Secretary of State forfeiting the corporate charter or certificate of authority to conduct business in Texas.

Should you refuse to cooperate with the Comptroller's auditor and make the records available by February 10, 2003, then the Comptroller's office will take immediate action to protect the State's interest.

I anticipate your full cooperation with this audit so the steps listed above will prove unnecessary. If you have any questions concerning this matter, please contact me at.

Sincerely,

Sam Hall
Auditor

Cc: Sue Craig, Auditor
Jane Wilkins, Audit Supervisor



COMPTROLLER OF PUBLIC ACCOUNTS

P.O. BOX 13528
AUSTIN, TX 78711-3528

Audit Division
Telephone (512) 463-3900
FAX (512) 475-0349

Request for Subpoena of Records

CASE NAME		CASE NUMBER
NAME OF PROSECUTING ATTORNEY		COUNTY
TELEPHONE NUMBER		
TYPE OF SUBPOENA		PROSECUTOR CASE NUMBER
FIRST PARTY: <input type="checkbox"/> THIRD PARTY: <input type="checkbox"/> GRAND JURY: <input type="checkbox"/>		
NAME OF PERSON OR ENTITY TO WHOM SUBPOENA WILL BE SERVED		ADDRESS
NAME OF PERSON OR ENTITY FOR WHOSE RECORDS SUBPOENA WILL BE SERVED		ADDRESS
DETAILED DESCRIPTION OF RECORDS FOR WHICH SUBPOENA WILL BE SERVED		TIME PERIOD
PRINT NAME OF INVESTIGATOR OR AUDITOR WHO WILL SERVE THE SUBPOENA		TITLE
SIGNATURE OF INVESTIGATOR OR AUDITOR WHO WILL SERVE THE SUBPOENA		DATE
ASSISTANT CHIEF OR SUPERVISOR APPROVAL		DATE
CHIEF OR MANAGER APPROVAL		DATE